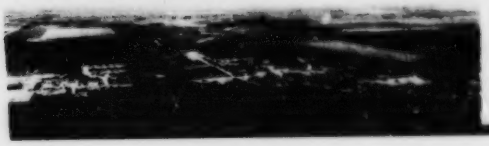
LOCAL GOVERNMENT SERVICES DIVISION



Municipal Services Branch

Proposed Amendments to the Control of Corporations Regulation (AR 373/94)

CONSULTATION DOCUMENT AND QUESTIONNAIRE

Please review the proposed amendments
and return your comments by June 7, 2002.

Return completed
questionnaire to:
Alberta Municipal Affairs
Municipal Services Branch
Legislative Projects Unit
17th Floor, 10155-102 Street
Edmonton, AB T5J 4L4
Fax: (780) 420-1016

Alberta
MUNICIPAL AFFAIRS

Alberta
MUNICIPAL AFFAIRS

102-07179/

Office of the Assistant Deputy Minister
Local Government Services

17th floor, Commerce Place
10155 - 102 Street
Edmonton, Alberta
Canada T5J 4L4

Telephone 780/427-9660
Fax 780/427-0453

March 2002

Dear Stakeholders:

As part of its regulatory review process, the department is reviewing the Control of Corporations Regulation (AR 373/94). The main purpose of this review is to ensure that the regulation is current and relevant in today's municipal environment.

This regulation defines "corporation" and sets out the specific requirement that a municipality or group of municipalities may not control any corporation unless the Minister's approval is obtained. Several amendments are proposed to clarify the process to control or divest a corporation.

This consultation document summarizes the proposed amendments, and includes a questionnaire that can be mailed, faxed, or e-mailed to the department. Your comments on the proposed amendments as well as other suggested changes are welcomed. Please forward your comments by **June 7, 2002**, to:

Alberta Municipal Affairs
Municipal Services Branch
Legislative Projects Unit
Attention: Mr. Blaine Alexander
17th Floor, Commerce Place
10155 - 102 Street
Edmonton AB T5J 4L4

Fax: (780) 420-1016 E-Mail: **blaine.alexander@gov.ab.ca**

You may also complete the consultation questionnaire on the Local Government Services consultation interface at: **http://cnn12.gov.ab.ca/ma/consultationccr**.

Yours truly,

Brian Quickfall
Acting Assistant Deputy Minister

Printed on recycled paper

CONTROL OF CORPORATIONS REGULATION (AR 373/94)

CONSULTATION PAPER AND PROPOSALS FOR AMENDMENTS

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CONTROL OF CORPORATIONS REGULATION

CONSULTATION PAPER AND PROPOSALS FOR AMENDMENTS

INTRODUCTION

Sections 1(2) and 73 of the Municipal Government Act (MGA), and the Control of Corporations Regulation AR 373/94 (the regulation) provide the legislative and regulatory framework to allow Alberta's municipalities to control for profit corporations.

The regulation requires the Minister's approval for a municipality or group of municipalities to control a corporation.

The regulation is being reviewed in accordance with the requirements of the Regulatory Review Secretariat to ensure it is current and relevant in today's municipal environment. This consultation paper starts by identifying and discussing key issues regarding the regulation, then proposes amendments to address each of the key issues, and finally, invites stakeholders to complete and submit a questionnaire to obtain their comments on the proposed amendments. Proposals to amend the regulation do not impact the MGA.

For ease of reference, a copy of the Control of Corporations Regulation is included in the appendices at the end of this document. For additional background reference, the appendices also include papers on "Philosophical Background", "Municipal Powers and Limitations Regarding Controlling a Corporation" and a "List of Current Municipally Controlled Corporations".

KEY ISSUES

A. CLARIFICATION OF APPROVAL

The regulation is unclear whether a municipality or group of municipalities must obtain approval from the Minister <u>prior to</u> establishing or acquiring a corporation.

Section 73(3)(b) of the MGA states that "the Minister may make regulations providing that certain corporations may not be controlled by a municipality or group of municipalities unless the Minister's approval is obtained." The approval of a municipally controlled corporation prior to establishment or acquisition is required to protect municipalities from becoming involved in business interests that are not a municipal purpose as defined in section 3 of the MGA, and businesses that may represent risk to the ratepayers and citizens of the municipality.

B. CLARIFICATION OF CORPORATION

The regulation is unclear whether a municipality or group of municipalities must obtain approval from the Minister for a municipally controlled corporation to acquire or establish a subsidiary corporation.

Section 73(4) of the MGA states that "the regulations may apply to one corporation or one approval or may be general".

Subsidiaries of municipally controlled corporations may not always be established or acquired for a municipal purpose and they might not operate in Alberta, or due diligence prior to an acquisition may confirm potential risks. Municipalities may therefore be placed at greater risk if subsidiaries are acquired or established without a review and approval by the Minister. There is a need to consider and protect the public interest regarding all acquisitions and incorporations.

C. GUIDELINES TO PREPARE APPLICATIONS

There are no guidelines in the regulation to assist municipalities in preparing applications to control a corporation.

Section 73(3)(a) of the MGA states that "the Minister may make regulations respecting information that must be provided to the Minister before a municipality or group of municipalities controls a corporation".

Section 73(3)(c) states that "the Minister may make regulations respecting terms and conditions that apply when a municipality or group of municipalities controls a corporation".

While no two applications to control a corporation are likely to be identical, there is a need to establish guidelines for the preparation process for purposes of consistency and thoroughness. This would also assist the Minister in his/her consideration of each application. Proposed guidelines would address the fundamental aspects of the corporation and the need for due diligence and assessment of financial capacity and impact in order to minimize risk between a municipality and its proposed controlled corporation(s).

D. DIVESTITURE

There are no guidelines in the regulation regarding a proposed divestiture of a corporation by a municipality or group of municipalities.

The decision to acquire or establish a corporation can be made by a council with the approval of the Minister, but a decision to divest falls exclusively within the jurisdiction of council unless there is a proposed sale to another municipality or group of municipalities.

A review of a proposed divestiture may be necessary, however, depending on the nature of the corporation and the potential risks that the sale may cause property owners, residents, and businesses.

PROPOSED AMENDMENTS

A. CLARIFICATION OF APPROVAL

Section 2 of the regulation states that a municipality or group of municipalities may not control any corporation unless the Minister's approval is obtained. It is proposed that the regulation be amended to clarify that:

> **a municipality or group of municipalities may not control a corporation without the prior written approval of the Minister.**

This proposed amendment would clarify the timing of the Minister's approval for controlling a corporation and would enable the Minister to review an application prior to the establishment or acquisition of a proposed corporation. This will help ensure that the proposed corporation is established for a municipal purpose as defined in the MGA and that the municipality or a group of municipalities are not exposed to unreasonable risk.

B. CLARIFICATION OF CORPORATION

Section 73(1) of the MGA defines "corporation" as a corporation that operates for the purpose of making a profit. However, it is unclear in section 2 of the regulation if the acquisition or establishment of a subsidiary of a corporation controlled by a municipality or group of municipalities also requires the Minister's approval. It is proposed that the regulation be amended to clarify that:

> **the Minister's approval must be obtained prior to a municipally controlled corporation acquiring or establishing a subsidiary corporation.**

This proposed amendment would clarify that both a municipally controlled corporation as well as a subsidiary established or acquired by a municipally controlled corporation require the Minister's prior approval. A reference to corporation herein this document also includes any subsidiaries of that corporation.

C. GUIDELINES TO PREPARE APPLICATIONS

The regulation does not establish guidelines, conditions or terms that may apply in preparing an application to control a corporation. The amendments proposed would establish standard requirements for all applications and consistency in the processing of such applications. The proposed guidelines would also assist the Minister in evaluating an application to control a corporation.

1. Municipal Purpose

Municipal purpose provides the scope that municipal councils are given to govern and administrate their municipalities. Section 3 of the MGA states that the purpose of a municipality is to provide good government, to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and to develop and maintain safe and viable communities.

It is proposed that the regulation be amended to clarify that:

the business of a municipally controlled corporation must fall within a municipal purpose as defined in section 3 of the MGA.

Clarifying that a municipality may not control a corporation for non-municipal purposes provides a measure of protection for residents from their municipalities becoming involved in questionable or high-risk ventures.

2. Business Purpose

Several scenarios exist where a municipality or group of municipalities may find it advantageous for the common good to acquire or establish a controlled corporation. It is proposed that the regulation be amended to clarify that:

the business to be controlled:

a) **is an acquisition of an existing corporation acquired to provide a municipal service, facility or other thing;**

b) **is a subsidiary of a municipally controlled corporation that is required for a municipal purpose;**

c) **provides or replaces a municipally operated service, facility or other thing, and is incorporated as a result of legislative or regulatory change such as electrical deregulation;**

d) **is a shell corporation established to acquire the shares and assets of an existing corporation for the purposes of divestiture, amalgamation, merger, reorganization or wind up of the existing corporation(s);**

e) **provides or operates a regional municipal service, facility or other things; or**

f) **is a private/public partnership relating to (a) to (e) above.**

Business purpose is important as it outlines a number of instances where an application to control a corporation to provide a municipal service, facility or other thing would be considered by the Minister.

3. Business Location

In most cases, the business of a corporation is confined to the geographic region in Alberta of the applicant municipality or group of municipalities controlling the corporation. However, certain markets as well as acquisitions for purposes of divesting and rolling assets into a municipal department may necessitate crossing provincial and international boundaries. It is therefore proposed that the regulation be amended to clarify that:

> **except for a corporation that generates, distributes, or retails electricity or gas, and/or a corporation otherwise approved by the Minister, the business of a municipally controlled corporation cannot be conducted outside of the Province of Alberta without the approval of the Minister.**

This proposed amendment will clarify that with certain exceptions, the business of corporations controlled by municipalities must be conducted within Alberta.

4. Corporate Name or Number

Providing the name or number of the corporation to be controlled is fundamental information that the Minister will require when considering approval to control the corporation. It is therefore proposed that the regulation be amended to clarify that:

> **a municipality or group of municipalities must provide the Minister with the name or number of the corporation(s) to be controlled prior to the Minister considering approval to control the corporation(s).**

This proposed amendment provides the Minister with basic information about the corporation that may be required in documents approving the Ministerial Order.

5. Financial Independence

A corporation controlled by a municipality or group of municipalities should be financially independent. It is proposed that the regulation be amended to clarify that:

> **a municipally controlled corporation cannot be financially dependent upon the controlling municipality or group of municipalities.**

6. Financial Capacity

The following proposed financial criteria would help to protect the municipality or group of municipalities from being burdened financially or with respect to liability as a result of controlling a corporation, and provide the Minister with additional information that would be helpful in evaluating the application:

a) an acquisition or start up cost of a municipally controlled corporation or group of corporations cannot:

i) cause the controlling municipality or group of municipalities to exceed seventy-five percent (75%) of its (their) debt limit or debt servicing limit, as provided for in the Debt Limit Regulation (AR 255/2000); and

ii) be for an amount greater than twenty-five percent (25%) of the debt limit of the controlling municipality or of any one of a group of controlling municipalities.

The above criteria are proposed to ensure that a municipality maintains a reasonable level of financial capacity for the on-going administration of local government. If, in proposed 6(a)(i), a municipality has already exceeded 75% of its debt limit, or 75% of its debt servicing limit, then it would not qualify to control a corporation. If, in proposed 6(a)(ii), the cost to establish or acquire a corporation exceeds 25% of the total debt limit of a municipality that by itself, or in partnership with a group of municipalities has applied to control a corporation, then that municipality cannot control a corporation. This threshold would provide some assurance that municipalities maintain borrowing flexibility for other municipal purposes. Reducing this guideline significantly may limit smaller municipalities from controlling a corporation, but it could encourage regional partnerships by several municipalities acquiring a corporation together.

The following hypothetical examples are provided for further illustration:

	City A	Town B
Debt Limit	$522,700,000	$2, 290,688
Actual Debt	165,103,000	1,432,460
Service Cost	28,221,000	326,906
75% of Debt Limit	392,025,000	1,718,016
25% of Debt Limit	130,025,000	572,672

In the case of City A, the maximum start up or acquisition cost to control a corporation would be $130,025,000, or 25% of debt limit. In this example, actual municipal debt would increase to $295,128,000 or 57% of debt limit. In this scenario, City A could be considered to control a corporation to the

maximum start up cost noted, as the actual debt would remain under the 75% debt limit.

In the case of Town B, the maximum start up or acquisition cost to control a corporation would be $285,556. This figure is the difference between 75% of debt limit and the actual debt. Expending $285,556 would bring this town's actual debt up to 75% of debt limit. Town B would not be considered to control a corporation if the start-up or acquisition cost exceeded $285,556.

Debt and debt service are always subject to change, but reviewing this data in conjunction with an overall review of the municipality or group of municipalities most recent financial statements may illuminate sound fiscal practices and on-going adherence to prudent municipal policy.

There is a need to review the financial viability, cost and scope of the business that a municipality or group of municipalities proposes to control. It is therefore proposed that:

b) if requested by the Minister, the following information must be provided:

i) the cost of incorporating or acquiring a controlled corporation;

ii) when acquiring an existing corporation and/or its subsidiary, a copy of the annual financial statement, the operating and capital budgets of the corporation and/or its subsidiary; and

iii) if a new corporation is being established, a copy of a proposed business plan including cash flow projections for the first three years of the proposed corporation's first three years of operation.

The information provided in 6(b)(i), (ii) and (iii) would assist the Minister in conducting a thorough review of the proposed corporation being established or acquired.

7. Public Benefits

To control a corporation, a municipality of group of municipalities should be able to clearly identify the direct benefits that residents of the municipality will receive. It is proposed that:

a municipality or group of municipalities must indicate or demonstrate how the profits/dividends of a corporation being acquired or established directly benefit the residents of the controlling municipality or group of municipalities.

This criterion would require some evidence that the proposed corporation would be for the public good.

8. Due Diligence and Liability Protection

Due diligence is an essential requirement prior to the startup or acquisition of any controlled corporation. Due diligence includes an audit of financial, environmental, legal and other potential liability. It is proposed that the regulation be amended to provide that:

a) **due diligence must be demonstrated by the municipality or group of municipalities through a written statement to the Minister with regard to human resource issues, and an audit of the assets, debts, and other financial or environmental liability; and**

b) **due diligence must include a review of the civil liability of the members of the board of directors of the corporation to be acquired or established.**

These criteria would ensure that the necessary steps and protocols have been followed. While helping to protect the municipality, such information would reassure the government that due diligence has occurred.

It is good business for a municipality or group of municipalities to take precautions regarding potential risk when deciding to control a corporation. The acquisition of liability insurance offers protection from risk for municipalities that control corporations. It is therefore proposed that:

c) **if requested by the Minister, a municipality or group of municipalities incorporating or acquiring a controlled corporation obtain sufficient third party insurance indemnifying the municipality or group of municipalities from liability that may result from loss due to the operation or closure of a controlled corporation.**

Liability insurance would protect the municipality from claims that result outside of the direct control of council.

9. **Confidentiality**

In a competitive market place, confidentiality of applications and attached documents is essential. The department, in its processing of applications to control a corporation, would respect the confidentiality of the information contained in the application if requested by the applicant. It is therefore proposed that:

all applications and information submitted to the Minister under this regulation and that are expressly marked as confidential must be dealt with in confidence by the Minister and the Minister's staff.

D. DIVESTITURE

There are no provisions in the regulation regarding divestiture. It is proposed that the regulation be amended to provide municipalities with the following guidelines when divesting themselves of a corporation:

a) **that the intent to sell a controlled corporation must be publicly advertised;**

b) **that the real asset value of the sale is verifiable as being the true market value, and disclosed by public advertisement if the sale is for an amount determined as less than fair market value;**

c) **that the essential information regarding the proposed sale has been fully disclosed to the public, and public response to the sale has been considered;**

d) **that, following a proposed sale of a corporation, the provision of an essential common service such as electricity or heat is ascertained as being secure and available at a comparable cost to the property owners, residents and businesses of a municipality or group of municipalities; and**

e) **that grants, loans or other tangible forms of assistance provided by the Government of Alberta to a controlled corporation that is being sold, are properly audited, and accounted for, and subject to repayment to the Province if the Minister so directs.**

There may be cases where the Minister may wish to review a proposed divestiture or provide direction. A specific example would be when the controlled corporation is set up to acquire the shares and assets of an existing corporation for the purposes of divestiture, amalgamation, merger, reorganization or wind up of the existing corporation. It is proposed that the regulation be amended so that:

f) **the Minister may conduct a review of a divestiture of a controlled corporation to ensure that the guidelines in (a) to (e) have been addressed; and**

g) **the Minister may set a time period in which a municipality or group of municipalities must divest, amalgamate, merge, reorganize or wind-up a controlled corporation.**

This criterion would allow the Minister to review a divestiture of a municipally controlled corporation and would assure that a divestiture, amalgamation, merger, reorganization or wind-up of a controlled corporation is completed within a reasonable period of time.

CONTROL OF CORPORATIONS REGULATION (AR 373/94)

STAKEHOLDER QUESTIONNAIRE

Respondent: _____

Position: _____

Representing: _____

Please provide your comments and suggestions on the following:

Clarification of Approval

It is proposed that the regulation be amended to clarify that a municipality or group of municipalities may not control a corporation without the prior approval of the Minister.

1. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Clarification of Corporation

It is proposed that the regulation be amended to clarify that the Minister's approval must be obtained prior to a municipally controlled corporation acquiring or establishing a subsidiary corporation.

2. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Guidelines to Prepare Applications

There are no guidelines in the regulation to assist municipalities in preparing applications to control a corporation.

Municipal Purpose

It is proposed that the regulation be amended to clarify that the business of a municipally controlled corporation must fall within a business purpose as defined in section 3 of the MGA.

3. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Business Purpose

It is proposed that the regulation be amended to clarify that the business to be controlled:

a) is an acquisition of an existing corporation acquired to provide a municipal service, facility or other thing;

b) is a subsidiary of a municipally controlled corporation that is required for a municipal purpose;

c) provides or replaces a municipally operated service, facility or other thing, and is incorporated as a result of legislative or regulatory change such as electrical deregulation;

d) is a shell corporation established to acquire the shares and assets of an existing corporation for the purposes of divestiture, amalgamation, merger, reorganization or wind up of the existing corporation(s);

e) provides or operates a regional municipal service, facility or other things; or

f) is a private/public partnership relating to (a) to (e) above.

4. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Business Location

It is proposed that the regulation be amended to clarify that, except for a corporation that generates, distributes, or retails electricity or gas, and/or a corporation otherwise approved by the Minister, the business of a municipally controlled corporation cannot be conducted outside the Province of Alberta without the approval of the Minister.

5. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Corporate Name or Number

It is proposed that the regulation be amended to clarify that a municipality or group of municipalities must provide the Minister with the name or number of the corporation(s) to be controlled prior to the Minister considering approval to control the corporation(s).

6. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Financial Independence

It is proposed that the regulation be amended to clarify that a municipally controlled corporation cannot be financially dependent upon the controlling municipality or group of municipalities.

7. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Financial Capacity

It is proposed that the regulation be amended to clarify that an acquisition or start up cost of a municipally controlled corporation cannot cause the controlling municipality or group of municipalities to exceed seventy-five percent (75%) of its (their) debt limit or debt servicing limit, as provided for in the Debt Limit Regulation (AR255/2000).

8. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is also proposed that the regulation be amended so that an acquisition or start up cost of a municipally controlled corporation or group of corporations cannot be for an amount greater than twenty-five percent (25%) of the debt limit of the controlling municipality or of any one of a group of controlling municipalities.

9. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is proposed that the regulation be amended to clarify that, if requested by the Minister, the following information must be provided:

i) the cost of incorporating or acquiring a controlled corporation;

ii) when acquiring an existing corporation and/or its subsidiary, a copy of the annual financial statement, the operating and capital budgets of the corporation and/or its subsidiary; and

iii) if a new corporation is being established, a copy of a proposed business plan including cash flow projections for the first three years of the proposed corporation's first three years of operation.

10. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Public Benefits

It is proposed that the regulation be amended to clarify that a municipality or group of municipalities must demonstrate how the dividends and profits of a controlled corporation will benefit the residents of the municipality.

11. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Due Diligence and Liability Protection

It is proposed that the regulation be amended to provide that due diligence must be demonstrated by the municipality or group of municipalities through a written statement to the Minister with regard to human resource issues, and an audit of the assets, debts, and other financial or environmental liability.

12. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is also proposed that due diligence must include a review of the civil liability of the members of the board of directors of the corporation to be acquired or established.

13. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is proposed that the regulation be amended to provide that, if requested by the Minister, a municipality or group of municipalities incorporating or acquiring a controlled corporation obtain sufficient third party insurance indemnifying the municipality or group of municipalities from liability that may result from loss due to the operation or closure of a controlled corporation.

14. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Confidentiality

It is proposed that the regulation be amended to provide that all applications and information submitted to the Minister under this regulation and that are expressly marked as confidential, must be dealt with in confidence by the Minister and the Minister's staff.

15. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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Divestiture

It is proposed that the regulation be amended to provide that the intent to sell a controlled corporation must be publicly advertised.

16. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is also proposed that the regulation be amended to provide that the real asset value of the sale is verifiable as being the true market value, and disclosed by public advertisement if the sale is for an amount determined as less than fair market value.

17. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is also proposed that the regulation be amended to provide that the essential information regarding the proposed sale has been fully disclosed to the public, and public response to the sale has been considered.

18. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is also proposed that the regulation be amended to provide that, following a proposed sale of a corporation, the provision of an essential common service such as electricity or heat is ascertained as being secure and available at a comparable cost to the property owners, residents and businesses of a municipality or group of municipalities.

19. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is also proposed that the regulation be amended to provide that grants, loans or other tangible forms of assistance provided by the Government of Alberta to a controlled corporation that is being sold, are properly audited, and accounted for, and subject to repayment to the Province if the Minister so directs.

20. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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It is proposed that the regulation be amended to provide that the Minister may conduct a review of a divestiture of a controlled corporation to ensure that the guidelines listed above have been addressed.

21. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

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To assure that these actions are completed within a reasonable time, it is proposed that the regulation be amended to provide that the Minister may set a time period in which a municipality or group of municipalities must divest, amalgamate, merge, reorganize or wind up a controlled corporation.

22. Do you support the proposed amendment?

☐ **Support** ☐ **Conditionally support** ☐ **Do not support** ☐ **Not applicable**

Give your reasons for support, non-support or alternative suggestions.

_____
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_____

Other - Do you have any other specific comments or suggestions?

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(no amdt)

ALBERTA REGULATION 373/94

Municipal Government Act
(SA 1994 cM-26.1)

CONTROL OF CORPORATIONS REGULATION

Definition

1 In this Regulation, "corporation" means a corporation that operates for the purpose of making a profit.

Minister's approval

2 A municipality or group of municipalities may not control any corporation unless the Minister's approval is obtained.

Transitional

3 *If the Minister has prior to January 1, 1995 consented to a municipality acquiring and holding the shares of a corporation and on January 1, 1995 the municipality controls the corporation, the Minister's consent is deemed to be an approval referred to in section 2.*

Coming into force

4 *This Regulation comes into force on January 1, 1995.*

PHILOSOPHICAL BACKGROUND

Municipalities do not operate in a vacuum, but are instead linked in an economic and social context to their residents, neighbouring municipalities, the provincial government, non-profit corporations, business and industry. Each link has a role in sustaining viable communities, and enhancing the mutual advantages that come from these linkages. The way in which councils govern their communities evolves as a result of the changes that occur to each link.

Municipalities have been encouraged by political leaders to adopt more entrepreneurial methods in their management function. As such, municipal governments are seeking innovative and diverse ways to maintain sustainable functions, develop new revenue sources, enhance levels of service, and maintain taxes at acceptable levels. Such initiatives at the municipal level have contributed to greater community self-reliance and fostered other intermunicipal projects.

Municipalities have always had a traditional role of engaging in core functions that served the common good, such as utilities and mass transportation systems. Net revenues from these core functions or essential services operated directly by the municipality were used to offset costs of other functions that operated at a loss. This helped to keep tax increases in check. Conversely the private sector provided goods and services to public organizations largely through procured contracts until the 1990's, but new initiatives including privatization of public services and the establishment of private/public partnerships have expanded the sphere of private business influence further into the traditional sphere of public business. The spheres of private and public sector business influence and their interaction is depicted in the graphic at the end of this appendix.

There may be several reasons for municipalities to determine a need to control a corporation. Changes to municipal legislation including the MGA have provided municipalities with greater autonomy to operate and govern. In January 1995, a new Municipal Government Act came into force, giving municipalities greater autonomy including natural person powers. Municipalities serious about building an on-going revenue base recognize that self-reliance built on local initiative or in partnership with the private sector is more likely to succeed than by relying on an uncertain foundation of provincial or federal grant programs. In some instances there may be benefits for municipalities to acquire a corporation in order to roll assets into a municipal function, and then divest the corporation.

In 1999, the *Electric Utilities Act* was amended to streamline and provide for deregulation of the electricity industry and created a need for municipalities that retail electricity to establish arms-length affiliates. Municipal-owned electric utilities such as *EPCOR* and *ENMAX* entered the competitive marketplace,

established a broader range of services such as utility bundling, and expanded into new markets. These initiatives reflected the government's position that deregulation of the electricity industry is an issue of competition versus monopoly and not an issue of private versus public enterprise. Such initiatives also reflect how local governments have responded to encouragement to become more entrepreneurial and self reliant, and dispels views that such actions are an infringement by the public sector into the traditional spheres of private sector activity.

These changes have had a transformational impact on the governance and administration of municipalities, and have led to an increase in inquiries and applications by municipalities to control for-profit corporations. This transformation has contributed to the need for a fundamental review of, and potential amendments to the regulation.

Private and Public Sector Spheres of Business Interaction

March 2002

MUNICIPAL POWERS AND LIMITATIONS REGARDING CONTROLLING A CORPORATION

1. MUNICIPAL PURPOSE

The fundamental purpose of a municipality is to provide good government, including the provision of services such as utilities that are necessary or desirable for all or part of a municipality. The public good or public interest means something in which the public as a whole has a stake, and an interest that justifies public policy or government regulation. The manner in which municipal government manages the public interest changes for many reasons, but the principle of good government for the protection and management of the public interest remains a constant. For example, deregulation and privatization of the electricity industry causes change to the way in which municipally owned utilities must operate, but it doesn't diminish or change the principle that the public's interest must be protected.

The provision of good government including the provision of services and things that are necessary or desirable (section 3 of the MGA) is ambiguous and subject to more than one interpretation. Section 6 of the MGA gives a municipality natural person powers, and councils may therefore mistakenly hold the view that their municipality can control a corporation for almost any reason including an opportunity to earn a profit. This view is mistaken, as the act of making a profit is the presumed result of controlling a corporation but it does not constitute a municipal purpose.

Municipal purpose is more clearly defined in section 7 of the MGA. This section provides the general jurisdiction or sphere in which council has the power to pass bylaws. Subsection 7(f) gives a municipality the authority to pass bylaws related to services provided by or on behalf of the municipality, and subsection 7(g) references public utilities which by definition may include the provision of: water or steam; sewage disposal; public transportation; irrigation; drainage; fuel; electric power; heat; waste management; and street lighting. Municipal purpose therefore applies to those functions (services, facilities, or other things) granted through expressed authority by existing legislation.

2. NATURAL PERSON POWERS

A municipality generally has all the powers of a natural person and can provide the functions that are described in the MGA or any other enactment. In general, natural person power gives a municipality greater ability to consider the establishment or acquisition of a corporation, but section 6 of the MGA restricts the scope of natural person powers by giving a municipality

such authority *"only to the extent that such powers are limited by this or any other enactment"*. The limitation regarding the control of a corporation is the requirement in Section 73(2) of the MGA that "no municipality may, by itself or with other municipalities, control a corporation except in accordance with the regulations. Section 2 of the Regulation requires the Minister's approval to control a corporation.

3. CONSTITUTIONAL LIMITATION

A municipality's municipal purpose and natural person powers may also be subject to constitutional limitations. Municipalities only have those powers conferred upon the provincial government by Canada, through sub-delegation. This may include businesses such as postal services, or railways or other works or undertakings extending beyond the limits of the province or any other function that has not been conferred upon the provincial government by the Constitution Act.

4. PROVINCIAL LIMITATIONS

The province is responsible for forming municipalities and for approving changes to their status, structure, powers and land jurisdiction. The authority in granting a municipality or group of municipalities the approval to control a corporation lies with the Minister. This authority is a mechanism to protect municipalities from becoming involved in potentially risky business ventures, and to ensure that business being conducted by municipalities provides a municipal purpose. It is therefore prudent and necessary to clarify the limitations and conditions for the approval of a municipality or group of municipalities to control a corporation.

List of Municipally Controlled Corporations

Municipality	Corporation
City of Edmonton	1. EPCOR Utilities Inc. Subsidiaries include: <u>Energy Division</u> • EPCOR Water Services Inc. → EPCOR North Island Water Inc. • EPCOR Generation Inc. • EPCOR Power Development Corporation • EPCOR Power Holdings Corporation • EPCOR Power Development Inc. (US sub) • EPDC, Inc. (US subsidiary) • EPCOR Energy Services Inc. • EPCOR Energy Services (Alberta) Inc. • EMCC Limited • EPCOR Merchant and Capital Inc. • ENCORE Energy U.S., Inc. (US sub) • EPCOR PPA Management Inc. • EPCOR Energy Securitizations Inc. • Union Energy Inc. • EPCOR Capital Inc. <u>Infrastructure Division</u> • EPCOR Transmission Inc. • EPCOR Distribution Inc. • EPCOR Water Services Inc. • EPCOR North Island Water Inc. • Westcoast Hydrant & Water Services Inc. • EPCOR Technologies Inc. • EPCOR Technologies (Logistics) Inc. <u>Corporate Services</u> • 812244 Alberta Ltd. • EPCOR Finance Corporation 2. Olde Towne Market Corporation (commercial property rehabilitation)

List of Municipally Controlled Corporations

City of Calgary	1.	ENMAX Power Corporation
	2.	ENMAX Energy Corporation
City of Medicine Hat Note: These are share acquisitions – the intent is to wind up the corporations.	1.	650591 Alberta Ltd. (oil and gas interests)
	2.	879575 Alberta Ltd. (oil and gas interests)
	3.	884576 Alberta Ltd. (oil and gas interests)
	4.	Dundee Petroleum Corp. (oil and gas interests)
	5.	Kenesen Petroleum Corp. (oil and gas interests)
	6.	Spiral Resources Ltd., (oil and gas interests)
	7.	Mitford Resources Ltd. (oil and gas interests)
	8.	545424 Alberta Ltd. (oil and gas interests)
	9.	David W. Street Financial Services Ltd. (oil and gas interests)
	10.	905995 Alberta Ltd. (oil and gas interests)
	11.	912212 Alberta Ltd. (to make an offer)
	12.	942235 Alberta Ltd. (to make an offer)
	13.	Allied Oil & Gas Corp. (oil and gas interests)
	14.	Backer Petroleum Corp. (oil and gas)
	15.	Backer Resources Inc. (oil and gas interest)
	16.	Allied Oil & Gas Partnership (oil and gas)
Town of Drumheller	1.	878947 Alberta Ltd. (commercial property rehabilitation)

All corporations listed were approved by Ministerial Order except the subsidiaries of EPCOR Utilities Inc.